Bush Denied Control of His Records

Judge Voids Deal Signed With Archivist

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By Toni Locy
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A federal judge yesterday declared "null and void" a controversial agreement signed in the waning hours of the Bush administration that gave the former president broad legal control of computerized records of his presidency.

U.S. District Judge Charles R. Richey ruled that the agreement between President George Bush and then-Archivist Don W. Wilson on Jan. 19, 1993, circumvented the Presidential Records Act, which abolished presidential ownership of White House records and was passed after Watergate and the fight over former president Richard M. Nixon's documents and tapes.

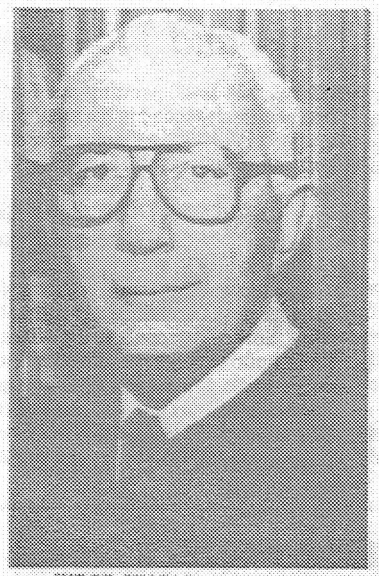
"Indeed, to hold otherwise would be to find that an agreement between the president and certain officials of the executive branch, signed on the last day of an administration, may supersede an act of Congress; such a notion, of course, is insupportable," Richey wrote in a 51-page opinion. "No one—not even a president—is above the law," he added.

Richey called the agreement made by Wilson—who added to the controversy by becoming director of the George Bush Center at Texas A&M University—"arbitrary, capricious, an abuse of discretion, and contrary to law."

He ordered acting archivist, Trudy H. Peterson, not to honor the agreement, which the Clinton administration defended in court.

Instead, the judge ordered Peterson to comply with the Presidential Records Act, which regulates presidential records during and after a president's term of office. Under it, most presidential records become available to the public no later than five years after the archivist gets custody of them. Before leaving office, however, a president can impose restrictions on some sensitive documents for up to 12 years.

Attorney Michael E. Tankersley, who represents the watchdog group Public Citizen and several others that sued the archivist, said Richey's decision is important because it protects public access to "very valuable information" generated by the White House, such as "who knew what when" on important issues and controversies.



JUDGE CHARLES R. RICHEY
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In January 1993, as Bush prepared to leave office, officials dismantled the White House information system. Subsequent court orders required the material be placed on backup disks or paper. The archivist then took possession of 5,000 magnetic tapes, more than 140 hard disk drives and one floppy disk containing memoranda, documents, calendars and other information kept in electronic form by staff of the Executive Office of the President. Allegations emerged that some materials were erased or lost.

Under the agreement, Bush controlled the fate of computerized records on such matters as Bosnia and potential evidence of the preelection search of President Clinton's passport files. The agreement also gave Bush, as a private citizen, veto power over release of documents he considered personal. He could even order the archivist to destroy documents under the deal, and the records dealing with the Clinton passport controversy were to be returned to him once an independent counsel is finished with them.

Richey, in a footnote, described the controversial agreement as curious. He said Bush did not sign it as president, but simply as "George Bush." The document also was not on White House stationery, nor was it time-stamped, he said.